

MICHAEL J. ROURKE
District Attorney



ROBERT W. MILLER
Assistant District Attorney

Office of the District Attorney
Nineteenth Judicial District

915 10TH Street
P.O. Box 1167
Greeley, CO 80632
Phone: (970) 356-4010
Fax: (970) 352-8023
www.weldda.com

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Chief Rick Brandt
Evans Police Department
1100 37th Street
Evans, CO 80620

Chief Carl Harvey
LaSalle Police Department
128 North 2nd Street
LaSalle, CO 80645

RE: The investigation of the officer involved shooting of Michael Ray Rodriguez at 818 31st Street, Evans, CO on January 4, 2015

Chiefs Harvey and Brandt:

The investigation into the shooting of Michael Ray Rodriguez has been completed by the District Attorney's office and the Greeley Police Department. Applying the facts of the investigation to applicable Colorado law, criminal charges will not be filed against the officers who discharged their weapons. Included with this report is a summary of the investigation and the pertinent Colorado law.

I have determined that, under the circumstances presented in this investigation, I will not release the names of the officers involved in this incident. The Colorado Supreme Court in *Harris v. Denver Post Corporation*, 123 P.3d 1166 (Colo. 2005) and *Freedom Colorado Information v. El Paso County Sheriff's Department*, 196 P.3d 892 (Colo. 2008) addressed the issue of whether, and under what circumstances, the Criminal Justice Records Act requires disclosure of records of official actions by criminal justice agencies. These cases are not directly on point as the release of the officers' names alone does not fall squarely within the Criminal Justice Records Act. They are, however, informative in analyzing whether such disclosure is appropriate. Each of those cases require a custodian of criminal justice records to undertake a balancing test prior to the disclosure of criminal justice records and the information contained therein. This balancing test considers "the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request." *Harris* at 1175; *Freedom Colorado Information* at 899.

When I engaged in this balancing test, I was persuaded that the privacy interests of the individuals who may be impacted by a decision to allow inspection (i.e. the officers involved in this incident) outweigh the other four factors to be considered. The continued safety of the officers and their families is of paramount concern in this case as there have been threats of harm made to law enforcement officers in Northern Colorado through social media as a result of this incident. Therefore, I will not release the names of these officers, and they will be referred to in this report as the Evans Police Officer and the LaSalle Police Officer.

INVESTIGATIVE SUMMARY

On January 4th, 2015, Michael Ray Rodriguez (DOB: 05/24/1975) was shot and killed by officers responding to a 911 call reporting a "man with a gun." Rodriguez was observed in the parking area of Paradise Billiards, located at 818 31st Street, Evans, Colorado by officers of the Evans and LaSalle Police Departments. The officers observed Rodriguez walking near the entrance of the Paradise Billiards holding a black object in the same manner as a gun. Rodriguez did not comply with verbal commands by the officers to drop the object and put his hands up. In response to the officers' commands, Rodriguez cursed at the officers and told them they were going to have to shoot him. Rodriguez walked east in front of the entrance to Paradise Billiards when he turned, raised and pointed what appeared to be a gun in the direction of the LaSalle officer. The officers responded by fatally shooting Rodriguez.

The Weld County District Attorney's Office, in conjunction with the Greeley Police Department, investigated the shooting. The investigation consisted of recorded interviews with officers and witnesses; crime scene documentation and processing; photographs and diagrams; expert analyses; recordings from dispatch and body cameras; and cellular phone records.

Numerous law enforcement agencies responded to the scene. Witnesses were taken to the Greeley Police Department for interviews. The Evans officer was interviewed at Greeley PD in the early morning hours of January 5, 2015 by Detective John Kinne from the Greeley Police Department and Investigator Traci Dowd from the District Attorney's Office. The LaSalle officer was interviewed on January 6, 2015 at Greeley PD by Detective Kinne and Chief Investigator Keith Olson from the District Attorney's Office.

INVESTIGATION

On January 4, 2015 at 11:20 p.m. Weld County Dispatch received a call from Nicole Verkuilen, a bartender at Paradise Billiards located at 818 31st Street, Evans, CO. She told dispatchers, "Please hurry, he's got a gun...there is a guy outside with a gun with a girl, and I had to lock her out because I don't want him in here." Verkuilen went on to tell dispatch, "he's got a gun and he told me to just get my bitch ass back inside the bar, or whatever and then she's on the ground, and I mean seriously, he said I already called the cops..." Verkuilen told dispatch several times that there was someone armed with a gun and a screaming female outside of the bar. She repeatedly told dispatch to have the officers hurry. At 11:22:57 p.m., Verkuilen told dispatch "...and now he's got another person that came in...he got someone who came into the bar, and now he's got them and he's taken them with a gun." She described the person with the gun as wearing a blue Dallas Cowboys jersey. Verkuilen then told dispatch at 11:23:25 "and

he's taken I think one of my other f_____ people that came into the bar...and I think he's taken them at gunpoint." This information was continually being provided to the responding officers beginning at 11:21 p.m.

The Evans officer responded to the Paradise Billiards parking lot. When interviewed, the Evans officer stated he was familiar with the area so he parked on the west side of the lot and utilized his long gun given the lack of protective cover in the parking lot. At approximately 11:23 he observed Rodriguez and another party getting in the back of a white Trailblazer. Rodriguez appeared to be holding what the officer believed was a gun at his side. Because of these observations he requested back-up, and as he was making this request, the LaSalle officer arrived on scene.

The Evans officer stated he saw Rodriguez get out of the Trailblazer and the Evans officer began giving commands to him to put his hands in the air. According to the Evans officer Rodriguez said "f___ you" and raised his hands and pointed what appeared to be a gun at the Evans officer. The Evans officer aimed his long rifle at Rodriguez and took his gun off of safety, but did not fire due to the fact he could not see the gun. Rodriguez put his hands back down at his side. Rodriguez then began walking back eastbound towards the entrance to the bar.

The LaSalle officer described responding to a call involving a man with a gun at Paradise Billiards. Upon arrival he saw Rodriguez in a Dallas Cowboys jersey walking east from a white Trailblazer. The LaSalle officer stopped his police vehicle approximately 50 yards from Rodriguez. He heard the Evans officer to the west of his location. He saw Rodriguez had what appeared to be a gun in his hand. The officer stepped out of his vehicle armed with a rifle, positioned himself between the open driver's door and the cab of his patrol car and began giving commands to "put his hands up and drop the gun." The LaSalle officer indicated that he repeated these commands a minimum of three times.

The Evans officer believed he heard a round being cycled into the chamber of Rodriguez's gun, and Rodriguez responded to the officers' commands by stating "F___ you kill me." Next, according to both officers, Rodriguez leveled what appeared to be a gun towards the LaSalle officer and both the Evans officer and the LaSalle officer shot Rodriguez. The LaSalle officer believed he fired two or three times. The Evans officer told investigators he fired once and saw Rodriguez still had what appeared to be a gun still aimed at the LaSalle officer, so he fired approximately six more rounds.

When interviewed, the LaSalle officer stated he was in fear for his life when he shot because Rodriguez was aiming a gun at him. The Evans officer stated that he believed Rodriguez was going to shoot the LaSalle officer when he fired his rifle at Rodriguez.

Although the LaSalle officer was equipped with a body camera, the camera was not activated before or during the shooting. However, it was turned on immediately following the shooting.

Detective Kyle Peltz from the Greeley Police Department interviewed Nicole Verkuilen in the early morning hours of January 5, 2015. She was working as a bartender January 4, 2015

at Paradise Billiards. That night she observed Rodriguez drinking with his girlfriend Erica Casares (Casares) at the bar. Casares' parents own the bar, so she was familiar with them. Casares and Rodriguez attempted to leave at approximately 11:00, but had car trouble so they came back into the bar. Casares planned to find her own way home, which upset Rodriguez, and they began to argue. Verkuilen asked Rodriguez to leave the bar. Rodriguez left and Verkuilen locked the door behind him.

After approximately 15 minutes, Verkuilen said she heard loud banging on the door. She opened the door and Rodriguez pulled Casares out of the bar by her hair. She saw Rodriguez dragging Casares out along the wall, and saw that he had what she believed to be a gun in his hand. Verkuilen attempted several times to get Rodriguez to let Casares go and during one attempt Rodriguez pointed the gun at her and told her to get back into the bar. Verkuilen proceeded to call 911 and described her observations, discussed above, to dispatch.

Edgar Balderrama was interviewed at the Greeley Police Department in the early morning hours of January 5, 2015 by Det. Peltz. Balderamma went to Paradise Billiards on January 4, 2015 to give his friend Chris Serna a ride home. He took Serna home and returned to give Verkuilen a ride home. While at the bar he spoke to Casares, whom he had known from high school. He stated that Rodriguez appeared to be upset that he was talking to Casares. He heard Casares and Rodriguez arguing and Casares told Rodriguez to leave the bar. Rodriguez left and then, approximately five minutes later, he heard loud banging on the door and windows. He saw Casares unlock the door to let Rodriguez in, and then "he [Rodriguez] just snatches her."

Balderrama then opened the door after Rodriguez pulled Casares outside and saw Rodriguez holding what he described as "an Uzi." He told investigators that Rodriguez pointed it at him and told him to "get the f___ inside." Balderrama believed that Rodriguez was going to shoot him and immediately went back into the bar. He continued to hear what he believed to be Rodriguez assaulting Casares, but never saw him hit her. He described hearing Rodriguez "rack it back," a sound he believed to be Rodriguez chambering a bullet in the gun. He thought Rodriguez was going to kill Casares and start "spraying" people in the bar.

Balderrama looked out the window of the bar and saw Rodriguez push Casares into a white SUV and then saw Rodriguez walk away from the SUV. He saw police show up and heard officers tell Rodriguez to "put your hands up, put the gun down." He stated he was facing away from the window when the shots were fired, but believed by Rodriguez' posture that he was going to get shot by police.

Erica Casares was interviewed by Greeley Police Detective Jared Weeks in the early morning hours of January 5, 2015. Officers found her at the scene in a white Trailblazer. Casares was in possession of what appeared to be cocaine and had a strong odor of alcohol about her. She told police she was drinking at several establishments that day with her boyfriend Rodriguez. Casares repeatedly told officers that the last thing she remembers is sitting at the bar in Paradise Billiards and does not recall anything after that. She described that she had pain in her left thigh, but did not know why. Officers observed that a strap to her shirt was torn and that she had a large bruise on her left thigh.

Dmitri Manzanares was also interviewed by Detective Weeks early in the morning hours on January 5, 2015. He was at Paradise Billiards with his girlfriend Kayla Casares, the daughter of Erica Casares, on January 4, 2015. They had gone home for the evening and Manzanares received a call to return to Paradise Billiards to pick up Erica Casares and Rodriguez. When he arrived back at the bar he saw Rodriguez and Casares having an argument outside. He approached them slowly because he saw that Rodriguez had a weapon in his hand and heard Rodriguez tell Casares that he was going to kill her. Rodriguez then grabbed Casares by her throat and pinned her against the wall, while holding a tool shaped like a gun.

Manzanares said he was able to get Casares to his white Trailblazer and Rodriguez continued to threaten her. Rodriguez told her that she was “lucky I don’t bruise you in the face.” Rodriguez went to the other side of the car after Casares sat down. Rodriguez was pointing the tool in multiple directions. As Manzanares was backing his vehicle he observed lights from law enforcement and Rodriguez told him to go. Manzanares stopped the car and told Rodriguez, “if you’re going to do some crazy s___, do it by your car.” Manzanares said Rodriguez got out of his car and began racking the tool, similar to pumping a shotgun. Manzanares observed what he believed to be four or five officers confront Rodriguez. He saw Rodriguez treat the tool like a gun and point towards police, and then he heard the shots fired. He and Casares were removed from the car by police, and put in separate cars.

Detective Buckingham and Officer Zakavec, Crime Scene Investigators from the Greeley Police Department, processed the scene after sunrise because of the dark lighting conditions in the parking lot. They photographed and collected the .223 rifle used by the Evans officer. They found one live round in the chamber of the rifle and 19 live rounds in the magazine. They found a total of eight spent .223 cartridges in the west area of the parking lot near the Evans officer’s vehicle. The casings were 143 feet from where Rodriguez was shot.

Buckingham and Zakavec also found and collected the LaSalle officer’s .223/5.56 rifle in a locked position from the LaSalle officer’s patrol vehicle. The vehicle was 114 feet from where Rodriguez was shot. One spent 5.56 casing was found in the front seat and two other casings were located on the ground on the driver’s side of the LaSalle patrol car. There was one live round in the chamber of the rifle, one full magazine containing 29 live rounds and one partially full magazine containing 24 live rounds.

Buckingham and Zakavec searched the area where Rodriguez was shot as well as Rodriguez’ vehicle which was identified as a silver GMC Yukon. Near where Rodriguez was shot, the officers found a black and blue cellular phone, a spent bullet, a broken belt buckle, and a red and black Hilti nail gun, which is shown in the photograph below:



In Rodriguez' Yukon, they found a red plastic Hilti tool case sitting open in the rear passenger side. Inside the case they located numerous red strips of spent and unspent .27 caliber shots used in the Hilti nail gun. A nail gun nail was found on the ground at the rear driver side of the Yukon near the area Rodriguez was shot. Detective Kinne later noted that the nail gun had to be "racked" similar to a firearm in order to function, and that when it was "racked" it made a sound similar to a firearm.

When Erica Casares was interviewed on January 5, 2015, she provided law enforcement her cellular phone. The information from her cell phone was downloaded and Detective Kinne reviewed the contents. Kinne noted a string of texts from November 24, 2014 that indicated Rodriguez was attempting to commit suicide and a picture of Rodriguez with a belt around his neck was included with these texts. Detective Kinne also located a series of text messages that Rodriguez sent to Casares on December 20, 2014:

12/20/2014 9:14:59 PM(UTC+0), +1970 _____ (number removed for this report)
I'm going to go get drunk and off myself

12/21/2014 3:34:05 PM(UTC+0), +1970 _____ (number removed for this report)
I got that fake gun that looks real I get pulled over on pointed at the cops

12/21/2014 4:22:21 PM(UTC+0), +1970 _____ (number removed for this report)
Told u I got that fake gun I'm going to make them shot me

On January 14, 2015, a search was conducted on the phone which was identified as the work cell phone of Michael Rodriguez. During the download of the contents of his text messages, the same text messages quoted above appeared on his cell phone, and had been sent to Casares.

An autopsy was performed on Mr. Rodriguez by Dr. James Wilkerson at McKee Medical Center in Loveland on January 6, 2015. Dr. Wilkerson located four gunshot wounds. A wound to Rodriguez's left groin and pelvis resulted in extensive hemorrhage and exsanguination. It further revealed that Mr. Rodriguez had a .142 blood alcohol level.

APPLICATION OF THE FACTS TO THE LAW

The District Attorney's Office may charge an individual with a crime in cases where there appears to be a reasonable likelihood of conviction at trial based on our ethical obligations as prosecutors. Criminal liability, however, is established in Colorado only if it is proven beyond a reasonable doubt that a defendant has committed each of the elements of an offense defined by Colorado statute.

Further, it must be proven beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as homicide or assault in Colorado, our Criminal Code specifies certain circumstances in which the use of physical force is justified, also known as an affirmative defense. As the evidence establishes that Rodriguez was shot and killed by officers, the determination whether their conduct was criminal is primarily a question of legal justification.

C.R.S. 18-1-707(2)(a) establishes when a peace officer can use deadly force to defend himself or others. The statute reads, in pertinent part, as follows:

A peace officer is justified in using deadly physical force upon another person...only when he reasonably believes that it is necessary...**to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force** (emphasis added).

Section 18-1-901(3)(d) of the Colorado Revised Statutes defines the term “Deadly Physical Force” as follows:

“Deadly Physical Force” means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

Further, Colorado case law unequivocally states that when determining whether it was necessary for an individual to act in self-defense or in the defense of someone else that person is entitled to rely on “apparent necessity.” This can be relied on as long as the conditions and circumstances are such that a person would reasonably believe the defensive action was necessary. *See People v. LaVoie*, 395 P.2d 1001 (1964); *Riley v. People*, 266 P.3d 1089 (Colo. 2011). Thus, it is irrelevant to this analysis whether Rodriguez intended to shoot the officer. The issue is whether it was reasonable for the officers to believe that Rodriguez was going to fire a gun at the officers or at anyone else at the time they discharged their firearms.

In this case, the officers were attempting to contact Rodriguez in order to conduct an investigation based on the information relayed by Verkuilen, which could constitute the crime of menacing. Colorado Revised Statutes §18-3-206 (1)(a), defines Menacing, a class 5 felony, as follows:

- (1) A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury:
 - (a) By the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon.

Section 18-1-901(2)(e) of the Colorado Revised Statutes defines the term “Deadly weapon” as follows:

“Deadly Weapon” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: a firearm, whether loaded or unloaded; a knife; a bludgeon; or any other weapon, device, instrument, material, or substance, whether animate or inanimate.

It was clear law enforcement believed Rodriguez was in possession of a firearm when they were responding to the scene. The Evans officer requested back up after arriving on scene to assist in contacting Rodriguez because he believed him to be armed. Witnesses who were in much closer proximity to Rodriguez than the officers also believed he was in possession of a firearm.

Throughout the course of the incident, Rodriguez refused to comply with the commands of the officers. He refused to show them his hands and put down his weapon. Rodriguez ignored these commands and pointed what the officers reasonably believed was handgun at them, cursed at them and told them they are going to have to shoot him. Based on his texts dated December 20, 2014 Rodriguez was well aware of what could occur when one aims a gun or an object similar to a gun at law enforcement. Rodriguez' actions on January 4, 2015 were akin to what he described in the aforementioned texts and it is apparent from witness statements that he wanted the officers and others at the bar to believe he was in fact armed with a firearm.

The officers reasonably believed at that time, based on all of the surrounding facts and circumstances known to them that the LaSalle officer or others were in imminent danger of death or serious bodily injury, just as Verkuilen, Manzanares and Balderrama all believed that he was then and there armed with a firearm, and was going to begin shooting Casares or others.

Rodriguez would have also reasonably known that the individuals giving him commands were police officers because they identified themselves as such and were driving marked law enforcement vehicles. Verkuilen specifically told dispatch that Rodriguez stated he knew that she had called police, and at the first sight of marked patrol units, Rodriguez told Manzanares to just "go, go, go."

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that the Officers were justified in using lethal force against Michael Ray Rodriguez because they reasonably believed that it was necessary to defend themselves and/or others from Mr. Rodriguez's threatened use of deadly physical force.

CONCLUSION

Under C.R.S. 18-1-707(2)(a), the officers' actions in this situation were justified and authorized by law in order to defend and protect themselves and others from the potentially volatile and dangerous circumstances they faced. As a result, the Weld County District Attorney's Office will not file charges against the Evans or the LaSalle officer for the use of deadly physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,



Michael J. Rourke
District Attorney